In the
Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-914

GEORGE WALLACE, SR., ET AL.,
Petitioners

V.

J. P. HOUSE, ET AL.,
Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Respondents respectfully pray that this Court deny the petition for writ of certiorari sought by petitioner to review the decision of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on July 7, 1975.

QUESTIONS PRESENTED

I. Whether the Court of Appeals' decision in directing approval of the respondent city's redistricting plan, consisting of four single-member and one at-large district, was proper.

II. Whether court-ordered plans need be submitted to the Attorney General of the United States pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

STATEMENT OF THE CASE

Respondents accept petitioners' statement of the case for purposes of this response. (Petition for cert. p. 3) This response is filed pursuant to a request by the Honorable Michael Rodak, Jr., in a letter to the Attorney General of the State of Louisiana dated February 11, 1976.

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS' APPROVAL OF THE "MIXED" REDISTRICTING PLAN WAS PROPER IN THAT IT IS CONSISTENT WITH DECISIONS OF THIS COURT

In cases concerning the use of multi-member districts, this Court has repeatedly held that multi-member districts are not unconstitutional *per se*, but that the determination must rest upon the facts in the particular circumstances. *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *White v. Regester*, 412 U.S. 755 (1973).

In *Chavis*, this Court stated that it has "insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements". *Id.*, at 144. Further, in *Regester, supra*, this Court not only declined to find multi-member districts unconstitutional *per se*, but also declined to find that they were unconstitutional when used in combination with single-member districts. *Id.*, at 765. This Court said:

> The plaintiffs' burden is to produce evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question-that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice. Whitcomb v. Chavis, *supra*, at 149-150, 91 S. Ct. at 1872.
> Regester, *supra*, at 766.

Respondents contend that, as the Fifth Circuit found, petitioners have not produced evidence to show inadequate black participation in the political processes in Ferriday, Louisiana under the "mixed" plan, and that, therefore, in accord with *Chavis* and *Regester, supra*, the Court's decree approving the "mixed" plan should be upheld, and the petition for certiorari should be denied. *

Further, respondents argue that the Court of Appeals for the Fifth Circuit properly gave deference to the Board of Aldermen's preference for a mixed plan. This Court has consistently held that reapportionment and redistricting are primarily legislative tasks. *Reynolds v. Sims*, 377 U.S. 533 (1964). *Ely v. Klahr*, 403 U.S. 108 (1971). *Gaffney v. Cummings*, 412 U.S. 735 (1973). The plan in Ferriday was devised by the Board of Aldermen, the town's legislative body. In support of the "mixed" redistricting plan, Judge Goldberg of the Fifth Circuit stated in his opinion:

> The reason usually given in support of at-large elections for municipal offices is that at-large

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* See Page 7.

> respresentatives will be free from possible ward parochialism and will keep the interests of the entire city in mind as they discharge their duties... we cannot say that the rationale is so tenuous that it can be disregarded. 515 F. 2d 619, 633 (5th Cir. 1975).

In addition, the Court of Appeals found that the plaintiffs had not demonstrated that the at-large device was conceived as a tool of racial discrimination. While the opinion of the court below does indicate that the "mixed" redistricting plan will probably yield three white seats and two black seats, whereas a five single-member plan would yield three black seats and two white seats, this Court has never held that any group is entitled to representation directly in proportion to its population. *Whitcomb v. Chavis*, 403 U.S. 124 (1971), and *White v. Regester*, 412 U.S. 755 (1973). Therefore, we submit that the mixed plan cannot be found discriminatory based upon the evidence presented, and we urge this Honorable Court to dismiss the petition for certiorari filed herein.

II. THE COURT-ORDERED PLAN NEED NOT BE SUBMITTED TO THE ATTORNEY GENERAL OF THE UNITED STATES FOR CLEARANCE PURSUANT TO § 5 OF THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1973c

This Court has recently held that court-ordered redistricting plans resulting from their equitable jurisdiction over adversary proceedings are not controlled by § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. *East Carroll Parish*

*School Board, et al v. Marshall,*_____U.S. ____, 44 U.S.L.W. 4320, 4321 n.6 (U.S. Mar. 8, 1976). In *Marshall,* this Court stated:

> In any event, we agree with the Court of Appeals, *Zimmer v. McKeithen,* 467 F.2d 1381, 1383 (CA5 1972); *Zimmer v. McKeithen,* 485 F. 2d 1297, 1302 n.9 (CA5 1973) (en banc), that court-ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by § 5. Had the East Carroll police jury reapportioned itself on its own authority, clearance under § 5 of the Voting Rights Act would clearly have been required. *Connor v. Waller,* 421 U.S. 656 (1975). However, in submitting the plan to the District Court, the jury did not purport to reapportion itself in accordance with the 1968 enabling legislation, see n.2, *supra,* and statutes cited therein, which permitted police juries and school boards to adopt at-large elections. App., at 56. . . . Since the reapportionment scheme was submitted and adopted pursuant to court order, the preclearance procedures of § 5 do not apply. *Connor v. Johnson,* 402 U.S. 690, 691 (1971).

The Board of Alderman in Ferriday, Louisiana submitted their plans pursuant to a court order, 515 F. 2d at 622. Therefore, respondents contend that the rationale of *Marshall, supra,* and *Connor v. Johnson,* 402 U.S. 690 (1971) applies and that court-ordered plans, such as that in Ferriday, do not require clearance by the Attorney General of the United States pursuant to § 5 of the Voting Rights Act of

1965, 42 U.S.C.§ 1973c.

CONCLUSION

For the above reasons, respondents submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing response to the Petition for Certiorari have been served on opposing counsel, this day of April, 1976.

• In *Beer v. United States*, No. 73-1869, decided March 30, 1976, this Court approved a mixed councilmanic plan of five single-member district seats and two at-large seats for the City of New Orleans. Underpinning the decision is the Court's analysis of the purpose of Section 5 of the Voting Rights Act: to prevent "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." This Court concluded that an ameliorative apportionment can violate Section 5 only if its discrimination on the basis of race or color would violate the Constitution. Clearly under these tests the instant reapportionment plan is lawful.